

opinion, therefore, she undertook by this agreement to obtain the necessary consent and to find a buyer within ten months.

The agreement then provided that in the event of failure of such sale, I paraphrase the petition writer and state what I consider the intention of the parties—she was to transfer the subdivision or subdivisions with the brick building on it. That would not be an impossible or an illegal undertaking if s. 10 of the Ordinance were invoked and if subsequently she received a grant or a lease in respect of the subdivision. But is of course impossible so long as the land remains Pesaka. Failing this transfer, the defendant, the agreement goes on, “shall be held responsible for all damages incurred by the lender” i.e. the plaintiff. The remainder of the agreement is not worth anything. In so far as it attempts to create a lien by deposit of the extracts from the Mukim Register, or purports to be an agreement to give a charge i.e. a mortgage under Chapter 125 it is illegal. I agree that where there is a statutory grant of land the title to which is registered under a system of registration of title as in the F.M.S. an equitable charge may be created by deposit of the certificate of titles. But the object of this Ordinance is to record the customary right of holders of agricultural land held under customary tenure and the capacity to transfer or mortgage the holder’s interest in the land is strictly limited. By s. 4 of the ordinance Conveyancing Law of the Colony is not to apply and if the law does not apply equity which follows the law cannot apply. Section 3 limits the class of holders to domiciled Malays. Under s. 12 transfers and mortgages have to be effected and registered in accordance with the Ordinance and not otherwise. Sections 21 to 28 provide the manner in which the statutory mortgage is to be effected and enforced and s. 29 renders invalid a sale or mortgage not in accordance with the Ordinance. The effect of these sections appears to me to preclude any lien or equitable charge being created by deposit of the Extract from Mukim Register. A customary landholder can only charge his interest in the land in accordance with the Ordinance and in this case, as Naning custom has to be applied and interest of the landholder is even more limited than that described in s. 6, even a mortgage effected in accordance with the Ordinance is hardly a practical proposition.

As there is, however, in this agreement a clear personal undertaking to perform certain acts: obtain a sale within the Suku or in default of obtaining a sale by transfer within the Suku to obtain a transfer of the subdivision or subdivisions with the building to the plaintiff and the failure to do either is admitted, damages necessarily flow from the breach of the under-

takings. What are the damages? Certainly the \$1,800 paid, but whether the plaintiff is entitled to interest upon this sum for the whole period is doubtful. He went into the transaction with his eyes open as to the defendant’s limited powers of transfer and offers no explanation as to the delay in bringing the suit. He also had a promissory note from the defendant which he permitted to become time-barred. The defendant however has had the use of the money. I think it just in the circumstances to add a nominal sum for interest and give judgment for the plaintiff for \$2,500 and costs of the suit.

As for the counterclaim; the defendant went into this transaction on equal terms with the plaintiff and she is not entitled to the declarations claimed. She has not proved any damage or loss consequent upon a demand being made for the delivery up to her of the Extracts from the Mukim Register. Even if these extracts had been in the defendant’s possession during the past 5 years, it would have been difficult for her to have made any effective disposition of her holdings; because it is evident from the entry in the Register referring to a file in the Collector’s office that, rightly or wrongly, such prospective dispositions were to be, if not prevented, at least very carefully supervised. It is also possible that the defendant may have to submit to a forfeiture under the Ordinance. On the whole, therefore, I consider that the Extracts had better be handed to the Collector by the plaintiff and I order accordingly.

The counterclaim is dismissed with costs.

Order accordingly.

Solicitor for the plaintiff—*D. E. T. Jayaswal.*

Solicitors for the defendant—

W. H. Salt & Co.

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

March 17, 1938.

H. AHMAD v. MUTHU PALANIAPPA
CHETTIAR.

[MALACCA SUIT No. 65 of 1937]

Architects Ordinance (Cap. 64)—Scale of Fees—Abandoned Work.

The scale of fees fixed by the Board of Architects under s. 3, sub-s. 1(b) of the Architects Ordinance was approved by the Governor in Council with effect on the 1st November 1932 and was duly gazetted.

Held, that in the event of a project being abandoned, by virtue of clause 9 sub-clause (b), two-thirds of the percentages mentioned in clause 2 is the whole fee payable; and this percentage is not liable to be increased under clause 4 in the case of alterations and additions to existing buildings; nor is it liable to be increased under clause 7 in the case of reinforced or structural steel building.

ACTION.

In this case the plaintiff was an architect and at the request of the defendant he prepared plans for alterations and additions to an existing theatre building. The first plan which he prepared was rejected by the Municipal Commissioners of Malacca on the ground that it did not comply with their bye-laws in certain important respects. An agreement had been made with the owner about the fees payable to the architect in respect of this plan and the amount so agreed was duly paid by the owner to the architect. Subsequently the owner instructed the architect to prepare further plans and he did so. Eventually a plan was passed by the Municipal Commissioners of Malacca but the work was not proceeded with. A part of the work came within the description of reinforced concrete or structural steel work and the whole of the work consisted of alterations and additions to the existing building. The architect claimed that under clauses 2, 4 and 7 of the Scale of Fees, if the work had been completed he would have been entitled to a percentage of $7\frac{1}{2}\%$ on the cost of the work (which exceeded \$20,000) plus an increase amounting to twice that percentage under clause 4 and in addition a further increase up to $33\frac{1}{3}\%$ under clause 7 by reason of the building being largely of reinforced concrete or structural steel. The defendant contended that what the plaintiff was entitled to was $\frac{2}{3}$ of $7\frac{1}{2}\%$ of the cost and that the additional percentage allowed by clause 4 only provided a maximum and that each case must be looked at to see whether the work done justified an increase of the percentage or not. The defendant also submitted that under clause 7 the additional percentage so added was to be allowed in respect of the cost of extra drawings and work in connection with the reinforced concrete or steel building, and that if such extra work and drawings had not in fact been done the architect could not charge any additional fee under clause 7 which also merely provided a maximum percentage up to which an extra charge might be made for this extra work and that in the case of this clause also (as in the case of clause 4) the work done must be scrutinised to see whether any additional charge could properly be made. Evidence was called by the defendant to show that in the actual case only the minimum work had been done by the plaintiff.

Salt and Massey for plaintiff.

John Laycock and *Goh Tiow Wan* for defendant.

Cur. Ad. Vult.

HORNE, J.—The claim in this case is not upon any prior agreement as to fees but must be assessed by the Court in the light of the

evidence before it. A short way would be to take Mr. Arbenz's evidence and reject that of the plaintiff as an interested party. But as a good deal has been said about the rules under which fees can be calculated, I think I ought to have regard to them and consider whether the plaintiff has made out his case in accordance with such rules.

In the case of a completed work the architect under the rules would be entitled in the absence of an agreement to the percentage under clause 2, an increase of that percentage under clause 4 and a further addition under clause 7 if no specialist was employed. But do these additions apply when the project is abandoned?

Clause 9 (b) states quite clearly— $\frac{2}{3}$ of the percentage stated in clause 2 on the estimated cost of such works. If clause 4 or clause 7 were intended to be taken to account on an abandoned project it would have been quite easy to say so, but clause 9 contains no reference to clauses 4 and 7.

Clause 2 reads as follows:—

"2. For taking the Client's instructions, preparing sketch design, making approximate estimate of cost by cubic measurement or otherwise, preparing drawings and specifications for the purpose of estimates, and the passing of the plans by the Municipalities, the Director of Public Works or the Rural Boards, obtaining tenders," (that is the point of abandonment in the present case).

The clause then continues:—

"advising on tenders and in preparation of Contract, selecting and instructing Consultants where necessary, furnishing to the Contractor one copy of the drawings and specification and such other details as are necessary for the proper carrying out of the works, general supervision as defined in the conditions of engagement above referred to, issuing certificates for payment and passing and certifying accounts minimum fees in respect of new works shall be a percentage on the total cost of all works executed."

It appears to me, in the case of executed works, from Mr. Arbenz's evidence that alteration and addition and executed works of reinforced concrete or steel constructions would entail more work by the architect subsequent to passing of plans and preparing a sketch specification as is in this case; and that extra fees would then be justifiable. I understand alterations and additions in clause 4 to mean actual alterations not projected and abandoned alterations. And in clause 7 it is clear that as the addition is to be charged on the cost of construction only, such

addition cannot apply to work abandoned before even a contract is let. In this case only the minimum, as Mr. Arbenz says, has been done by the architect, and neither on my view of these rules nor upon any reasonable view of the facts is more than 2/3rds of 7½% on \$25,000 justifiable, which would amount to \$1,250 less \$450 paid. Judgment for \$800 and costs on claim.

Order on counterclaim that the plaintiff deliver up to the defendant all plans in his possession and which were in his possession up to 28th January, 1937.

Order accordingly.

Solicitors for plaintiff—Salt & Co.

Solicitors for defendant—Goh Tiow Wan.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

March 18, 1938.

IN RE TEO OON SOON deceased.

[SINGAPORE PROBATE No. 283 of 1937.]

Administration—petition filed after expiration of six months—form—citations unnecessary—Probate and Administration Ordinance, ss. 4 (1), 54; R. S. C. O. 54 rr. 4 (1), 5 (b), 15

Where an application for grant of Letters of Administration to the estate of a deceased person is made after the expiration of 6 months from the date of his death the provisions of Section 54 of the Probate & Administration Ordinance apply thereto. Although it is desirable that such an application should mention prior or equal rights there does not appear to be any statutory obligation to do so. Under that section the Court has an unfettered discretion and it is not bound to take into consideration any priorities such as would have to be considered under Section 17 of the Ordinance. Nor is it necessary to serve citations in accordance with the provisions of Order 54 rule 15 when the period of six months has expired and the application is made under section 54 of the Ordinance.

MOTION.

De Mello for the Applicant on the Motion.

Aditan for the Petitioner (Respondent).

Cur. Ad. Vult.

TERRELL, J.—The intestate Teo Oon Soon died in Singapore on the 11th October 1892, i.e. more than 45 years ago. He left him surviving two sons, Teo Hong Lim and Teo Hong Guan and several daughters. Teo Hong Lim died in 1905 intestate, leaving him surviving Teo Yee Swee and three daughters. Teo Hong Guan died on 2nd October 1929 intestate, leaving him surviving Teo Hee Wai, Teo Hee Hock, Teo Quee Neo and another daughter.

As it was thought that neither Teo Oon Soon nor his sons had any property, no representation of their estates was applied for. On the 10th of April 1937 an order was made in Originating Summons 143 of 1936 declaring the trusts of cer-

tain property void, and in the result the property subject to the trusts devolved beneficially on certain estates, of which the estate of Teo Oon Soon was one.

On the 3rd August 1937 Teo Hee Hock, Teo Hee Wai and Teo Quee Neo obtained letters of administration to the estate of their father Teo Hong Guan deceased, and on the 12th August 1937 they applied for letters of administration to the estate of their grand father Teo Oon Soon in these proceedings. They applied as the lawful grand children of Teo Oon Soon and as the representatives of Teo Hong Guan. The petition was granted on the 3rd September 1937, and the grant was subsequently extracted.

Teo Yee Swee, a son of Teo Hong Lim, now applies to the Court to have the grant in favour of Teo Hee Hock, Teo Hee Wai and Teo Quee Neo revoked, on the grounds set out in Mr. de Mello's Notice of Motion. Such grounds are, (a) that the Petition did not comply with the provisions of Order 54 Rules 4 (1) and 5 (b) or with Form 70 of the Rules of the Supreme Court, and (b) that the Petitioners had omitted to serve citations as required by section 4 (1) of the Probate and Administration Ordinance.

The latter objection clearly fails as section 4 (1) of the Ordinance only requires citations to be served on persons having a prior right, and at the most the applicant, as a grandson of Teo Oon Soon, can only claim an equal right with the petitioners who are also grandsons.

But in fact neither the applicant nor the petitioners were the next of kin of Teo Oon Soon at the time of his death. His next of kin were his sons and daughters, and the petitioners, as representatives of a son, had clearly a prior right to the applicant who was not next of kin at the date of Teo Oon Soon's death, and has never obtained representation to the estate of his father who was one of such next of kin. (See *Savage v. Blythe*, 2 Haggard Appendix p. 150).

No charge of maladministration has been made, and the objection of the applicant is purely technical. The Court will of course be careful to see that the rules of procedure are observed and petitioners should strictly comply with the forms so as to put the Court in possession of all the facts before letters of administration are granted. I find, however, that although the Petition was *prima facie* defective in that it did not set out the names of the persons who had an equal right, namely the surviving daughters of Teo Oon Soon who were represented before me, there can be no suggestion that any attempt was made to deceive the Court, since, before the petition was granted, Teo Hee Wai, one of the petitioners, filed an affidavit on the 31st August 1937 setting out the facts so far as they were then known to the petitioners.